



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, LOS ANGELES DISTRICT
915 WILSHIRE BOULEVARD, SUITE 930
LOS ANGELES, CALIFORNIA 90017-3489

May 23, 2019

Jeff Humphrey
Field Supervisor
DOI-U.S. Fish and Wildlife Service
Arizona Ecological Services Office
9828 North 31st Avenue #C3
Phoenix, Arizona 85051

Dear Mr. Humphrey:

This letter concerns the informal consultation pursuant to section 7 of the Endangered Species Act completed for the proposed offsite mitigation parcel located in Cochise County, Arizona, for the proposed reinstatement of a Clean Water Act section 404 permit held by El Dorado Benson, LLC, associated with development of a 8,212 acre master-planned community located within the City of Benson's "Villages at Vigneto" Community Master Plan area, Cochise County, Arizona.

On May 26, 2017, the Corps requested concurrence with our determination that the proposed action at the offsite mitigation parcel may affect, but is not likely to adversely affect, the western yellow-billed cuckoo (*Coccyzus americanus*) and, in conference, its proposed critical habitat; the southwestern willow flycatcher (*Empidonax traillii extimus*); and the northern Mexican gartersnake (*Thamnophis eques megalops*) and, in conference its proposed critical habitat. In support of our determination, the Corps provided the U.S. Fish and Wildlife Service (USFWS) with a biological evaluation (BE) dated May 2017. By letter dated October 26, 2017, the USFWS concurred with our determination, concluding informal consultation.

The October 2017 letter contained conditions under which the USFWS might reconsider its determination. Those conditions have not occurred. Project plans have not changed, nor has new or different information become available. The proposed action, action area, listed species or critical habitat that may be affected by the action, and the manner in which the action may affect listed species or critical habitat has not changed.

However, recent media reports have contained statements from Mr. Steve Spangle, retired USFWS Field Supervisor for the Arizona Ecological Services office, alleging improper political interference in the informal consultation leading to USFWS's letter of concurrence. The Corps takes these allegations seriously. For this reason, the Corps has again reviewed the potential effects of the proposed action at the offsite mitigation parcel and has reconfirmed the appropriateness of its May 26, 2017 conclusion that the



proposed action at the offsite mitigation parcel may affect, but is not likely to adversely affect listed species and proposed critical habitat. As stated above, nothing has changed since May 2017 to alter the "not likely to adversely affect" analysis or conclusion. That said, out of an abundance of caution in light of these recent reports, we ask whether the comments made by Mr. Spangle change the USFWS's opinion concerning its concurrence determination.

If you have any questions, please contact Sallie Diebolt at (602) 230-6950 or via e-mail at sallie.diebolt@usace.army.mil.

Sincerely,


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David J. Castanon
Chief, Regulatory Division

CF:

Scott Richardson, USFWS
Mike Reinbold, El Dorado Benson, LLC